for actual expenditure incurred in travelling expenses to the hospital which were not proved.

In the course of his submissions, Mr. Pritam Singh, Counsel for the Defendant, conceded the issue of liability and it was suggested that for general damages the Plaintiff should be awarded $25,000 and for special damages by way of loss of actual earnings, loss of future earnings, and for loss of earning capacity a sum of $10,000 would be fair. Mr. C.K.G. Pillay was in agreement with these figures. I therefore awarded the Plaintiff $25,000 by way of general damages and $10,000 by way of special damages for actual loss of earnings and also for damages for loss of earning capacity and loss of future earnings.

The severity of this unprovoked attack on the Plaintiff led me to the view that this was an appropriate case for exemplary damages. I referred Counsel to the case of *Loudon* v. *Ryder*[1] as authority for the proposition that this was a proper case in which exemplary damages should be awarded. Both Counsel, out of deference to me, left the issue of exemplary damages to the Court. I then proceeded to award $15,000 as exemplary damages. I did so because I felt that this was a clear case where the Defendant should be punished for his conduct, and others who are minded to take the law into their hands should be deterred from inflicting this kind of violence. I also felt obliged to vindicate the strength of the law.

At the time this judgment was dictated the Order of the Court had not yet been extracted and I had an opportunity of re-considering the matter. It come to my notice that the case of *Loudon* v. *Ryder* was overruled by *Rookes* v. *Barnard*[2].

It would appear that the categories in which exemplary damages may be awarded are very narrow. Reference may be made to paragraph 119 of the *Halsbury's* Laws of England Vol. 12 at page 474 (4th Edition). The present case is not within the permitted categories and the award of $15,000 for exemplary damages was clearly *per incuriam*.

Accordingly I revise my order and hereby adjudge and order that the defendant in this case do only pay the Plaintiff the sum of $25,000 for general damages and $10,000 for special damages and for loss of future earnings and earning capacity. As for interest, I order that the same should run at 6% per annum from June 8, 1982 up to realisation. The Plaintiff will also have the sum of $2,000 in costs inclusive of disbursements.

Order accordingly.

Solicitors: *Hassan Yunos & Co.; Syarikat Pritam Singh.*

YEOH BAN ENG v. PENANG CHINESE SCHOOL TEACHERS CO-OPERATIVE SOCIETY LTD

[O.C.J. (Edgar Joseph Jr. J.) September 11, 1984]
[Penang – Civil Suit No. 45 of 1984]

Societies – Co-operative Society – Plaintiff suspended from the Committee – Rules of natural justice – Injunction against the Society – Application to discharge injunction – Striking out writ and statement of claim – No reasonable cause of action – Whether plain and obvious case – Balance of convenience. Co-operative Societies Act, 1948, s. 49 – Co-operative Societies Rules, 1949, r. 11B.

In this case, the plaintiff since 1971 has been a member of the defendant Society and served on its Committee for about 10 years. At a general meeting of the Society held on October 30, 1983, a resolution was passed making it a condition precedent for all applicants for membership to the Society to participate in the Society's Group Life Insurance Scheme under a policy issued by an assurance company. The plaintiff and some Committee members were unhappy about this resolution. The plaintiff and 69 ordinary members of the Society wrote to the Registrar-General of Co-operative Societies seeking his guidance. The Chairman of the Society was not happy by the course taken by the plaintiff who was called upon to explain his action in a meeting of the Committee of the Society held on December 3, 1983. The plaintiff complained he was taken by surprise since no prior notice of any alleged misconduct was given to him. The treasurer then moved a motion, seconded by a member of the Committee, for the plaintiff's suspension. At this point of time the plaintiff withdrew from the meeting. On or about December 6, 1983, he received a letter from the Committee stating that he had been suspended from the Committee as from December 3, 1983 up to the next general meeting. He complained that he was never given an opportunity to make a plea in mitigation of punishment.

The plaintiff obtained an *ex parte* interlocutory injunction restraining the Society from enforcing the decision of the Committee made on December 3, 1983. The Society made the present application to dissolve that injunction on the grounds that the writ of summons and statement of claim should be struck out as disclosing no reasonable cause of action or as being frivolous or vexatious or an abuse of the process of the court.

Held: (1) it is only in plain and obvious cases that the court will exercise its jurisdiction to strike out a writ of summons or statement of claim on the above grounds;

(2) the issues which arose for decision were complex and not free from difficulty and were eminently triable. There was no question of this being a clear and obvious case for the exercise of the jurisdiction to strike out;

(3) the rules of natural justice applied in this case and the plaintiff should have been heard in his defence;

(4) the balance of convenience lies in favour of preserving the *status quo* pending the trial of the action. The application to discharge the injunction was dismissed with costs.

Cases referred to:

(1) *Texaco Ltd.* v. *Mulberry Filling Station Ltd.* [1972] 1 All E.R. 513.
(2) *Leary* v. *National Union of Vehicle Builders* [1970] 2 All E.R. 713, 728.
(3) *Bates* v. *Lord Hailsham of St Marylebone & Ors.* [1972] 3 All E.R. 1019.
(4) *Pearlberg* v. *Varty (Inspector of Taxes)* [1972] 2 All E.R. 6.
(5) *Bird's Case* L.T. Vol. LXXII 599.
(6) *Hutton* v. *Attorney-General* [1927] 1 Ch. 427.
(7) *Breen* v. *Amalgamated Engineering Union* [1971] 1 All E.R. 1148.
(8) *Furnell* v. *Whangarei High Schools Board* [1973] 1 All E.R. 400.
(9) *Lewis* v. *Heffer & Ors* [1978] 3 All E.R. 354.
(10) *Gaiman & Ors.* v. *National Association for Mental Health* [1970] 2 All E.R. 362.
(11) *Subramaniam* v. *Tan Lee Leng & Ors.* [1980] 1 M.L.J. 171.
(12) *Periasamy s/o Karuppan & Ors.* v. *National Union of Plantation Workers & Ors.* [1975] 2 M.L.J. 108.
(13) *Tharmalingam* v. *Sambanthan* [1961] M.L.J. 63.
(14) *Kolandaisamy* v. *Annamalai & The Harbour Trade Union (Selangor) Port Swettenham* [1968] 1 M.L.J. 222.
(15) *John* v. *Rees* [1970] Ch. 345, 397D, 399H.
(16) *Lawlor* v. *Union of Post Office Workers* [1965] 1 Ch. 712, 729C-730B.
(17) *Rex* v. *Thames Magistrate's Court ex parte Polemis* [1974] 1 W.L.R. 1371, 1375A-C.
(18) *Attorney-General of Malaya* v. *Chiow Thiam Guan* [1983] 1 M.L.J. 51.
(19) *Stevenson* v. *United Road Transport Union* [1977] 2 All E.R. 941, @ 947.
(20) *Colquhoun* v. *Brooks* (1888) 21 Q.B.D. 52, 65.
(21) *Ikebife Ibeneweka & Ors.* v. *Peter Egbuna & Anor.* [1964] 1 W.L.R. 219, 224.
(22) *Hanson* v. *Radcliffe U.D.C.* [1922] 2 Ch. 490, 507.
(23) *American Cyanamid* v. *Ethicon* [1975] A.C. 396, 407.

NOTICE OF MOTION.

Ho Sen Feek for the applicants/defendants.
R.J. Manecksha for the respondent/plaintiff.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: By this application by Notice of Motion supported by affidavit, the Defendants sought an Order dissolving the *ex parte* interlocutory injunction contained in the *ex parte* order of this Court made on January 1, 1984, restraining them, whether by themselves, their servants or agents or otherwise, until further Order, from enforcing the decision of the Defendants' Committee made on December 3, 1983, suspending the Plaintiff from the said Committee or interfering with the Plaintiff's attendance at Committee meetings and from his exercise of all the rights of a Committee member ("the injunction").

Stated broadly, the ground upon which dissolution of the injunction was sought was that the Writ of Summons and Statement of Claim should be struck out as disclosing no reasonable cause of action or as being frivolous or vexatious or an abuse of the process of the Court.

It is trite to say that it is only in plain and obvious cases that the Court will exercise its jurisdiction to strike out a Writ of Summons or Statement of Claim on the grounds just mentioned.

It is with this principle in mind that I turn to consider the facts of the instant case.

By the endorsement appearing in his Writ of Summons, the Plaintiff claims against the Defendants:

(1) A declaration that the decision of Committee of the Defendant Society of 3rd December, 1983, purporting to suspend the Plaintiff from the said Committee pursuant to Rule 11B of the Co-operative Societies Rules, 1949, was *ultra vires* and void.

(2) An injunction restraining the Defendant Society whether by its officers, Committee, members or otherwise howsoever from doing the following acts or any of them, that is to say, suspending the Plaintiff from the Committee of the Defendant Society on the ground that he was one of the 69 signatories to an appeal dated the 9th day of November, 1983, and made to the Registrar-General of Co-operative Societies, Malaysia, and had made press statements in regard to that appeal and therefore his actions were prejudicial to the interests of the Defendant Society and otherwise from enforcing and acting upon the said decision and from taking or continuing and from directing or permitting to be taken or continued any steps with a view to effecting any such suspension.

(3) Damages for libel and slander.

(4) Damages for being wrongfully suspended from the said Committee.

(5) Interest.

(6) Costs.

(7) Such further or other relief as this Honourable Court may deem fit to provide.

The evidence upon which the Plaintiff seeks to rely in support of his suit can be gathered from his

affidavit affirmed to on January 21, 1984 (En. 2) filed in support of his application for injunction (En. 3).

That evidence may be summarised thus:

Since 1971 the Plaintiff has been a member of the Defendant Society, being a Society registered under the Co-operative Societies Ordinance, 1948, and served on its Committee for about ten years.

At a General Meeting of the Defendant Society held on October 30, 1983, he was once again elected to the said Committee for a period of three years. One of the resolutions passed at this General Meeting adopted an earlier resolution of the 1982 Committee making it a condition precedent for all applicants for membership to the Society to participate in the Society's Group Life Insurance Scheme under a policy issued by the American International Assurance Limited.

This resolution was passed although it was not an item on the agenda calling for the meeting.

Some of the members of the Committee, including the Plaintiff, were not happy about this resolution because they believed it would impose an unnecessary financial burden on new members. Accordingly, the Plaintiff and 69 ordinary members of the Defendant Society wrote to the Registrar-General of Co-operative Societies stating their reasons why they thought that the resolution was wrong and asking for guidance as to whether, in the circumstances, the Co-operative Societies Rules, 1949, had been contravened.

The Chairman of the Defendant Society was not happy about the course taken by the Plaintiff and the 69 ordinary members aforesaid. So, at one of the monthly meetings of the Committee of the Defendant Society held on December 3, 1983, the Plaintiff was called upon to explain why he had signed the letter addressed to the Registrar-General of Co-operative Societies.

The Plaintiff complained that he was taken by surprise since no prior notice of any alleged misconduct was given to him. There was not even an item in the agenda indicating that he would be required to render an explanation.

Be that as it may, the Plaintiff gave his reasons for signing the said letter after which he was asked by the chairman to withdraw from the meeting. The plaintiff declined.

The Treasurer then moved a motion for the Plaintiff's suspension. This was seconded by a member of the Committee. It was at this point of time that the Plaintiff withdrew from the meeting.

Next, on or about December 6, 1983, the Plaintiff received a letter from the Committee stating that he had been suspended from the Committee as from the December 12, 1983 and that the duration of the suspension would be up to the next General Meeting.

The Plaintiff complained that he was never given an opportunity to make a plea in mitigation of punishment. The Plaintiff was advised by his solicitors that in the circumstances the Committee had contravened the principles of natural justice and that, therefore, the decision to suspend him was null and void.

The Plaintiff's solicitors consequently wrote a letter dated December 9, 1983 addressed to the Secretary of the Defendant Society demanding that the Society rescind the suspension aforesaid. The Defendant Society's solicitors replied that the suspension was quite valid and the decision to suspend would not be altered. The Plaintiff's solicitors then took the matter up with the Registrar of Co-operative Societies, Penang, by a letter dated December 23, 1983, outlining his grievances and asking for a decision upon the issues raised as outlined above. As the Plaintiff received a negative reply his solicitors raised the matter with the Registrar-General of Co-operative Societies by a letter dated January 3, 1984 (exh. Y affidavit En. 2).

By a letter dated January 10, 1984, the Registrar-General replied stating that the Society in suspending the Plaintiff had acted in accordance with the law and in accordance with the Rules governing the Defendant Society. But he did add that in accordance with Rule 11B(1) the Plaintiff's suspension was required to be brought to the attention of the General Meeting, adding that if the decision of the General Meeting were challenged by the Plaintiff he could then refer the dispute to the Registrar-General. His concluding observation was: "At this stage any interference from the Registrar-General is not only unjustifiable but also against the spirit of the Rules concerned."

As a result, the Plaintiff through his solicitors issued a writ praying for the reliefs aforesaid.

In his affidavit affirmed to on January 17, 1984 (En. 11) in support of the Defendant's motion

to discharge the injunction, Mr. Yeoh Kheng Teong the headmaster of Tong Sian School, Penang, deposed that he is the president of the Defendant Society being a society whose primary object was to grant loans to its members. He confirmed the passing of the resolution on January 30, 1983, which is the bone of contention in the proceedings herein but explained that before its passing the Defendant Society had considered past precedents set by other co-operative societies for similar group life assurance schemes for its members. He cited examples. He complained that apart from the letter of complaint signed by the Plaintiff and 69 other signatories addressed to the Registrar-General of Co-operative Societies dated November 9, 1983 the Plaintiff and his 69 colleagues had given a Press release which was widely circulated in all the local newspapers ventilating their grievances. He mentioned that upon being asked to explain why, although he was a committee member, the Plaintiff had signed the letter of complaint objecting to the Group Life Insurance Scheme and the consequent publicity given to it in the press release, the Plaintiff offered the following explanations:

"(i) that the group signing of complaint was their own private matter and it has nothing to do with the Committee;

(ii) that the group signing of letter to the Ketua Pengarah of Co-operative Societies was to seek the Ketua Pengarah's decision on whether it is legal for the Committee to force new members into buying the group life insurance;

(iii) that the Plaintiff himself is signing in his capacity as member together with 69 other members;

(iv) that a member has a right to refer to the Ketua Pengarah for their objection. After all this is a small matter, there is no need to have it tabled at the Committee meeting for discussion.

(v) that at the time he signed the letter of complaint he was an ordinary member and not a committee member."

Mr. Yeoh further alleged that the Plaintiff was given a chance to exculpate himself after which, in his capacity as chairman, he requested the Plaintiff to withdraw from the meeting to enable the Committee to deliberate upon the matter. This the Plaintiff refused to do saying that the Chairman had no right to ask him to leave.

Later, however, the Plaintiff did leave and, as a result of a proposal which was seconded by another committee member, a resolution was unanimously passed suspending the Plaintiff until the next General Meeting in accordance with Rule 11B of the Co-operative Societies Rules, 1949, on the ground that the action taken by the Plaintiff was detrimental to the interests of the Defendant Society.

According to the Defendants, the Order for suspension was made pursuant to Rule 11B of the Co-operative Societies Rules, 1949, which reads as follows:

"(1) A Board may suspend any of its members where a majority of the members of the Board are satisfied that such member has acted in a manner prejudicial to the interests of the registered society or of the co-operative movement.

(2) A member of the Board who is suspended under the provisions of sub-rule (1) of this Rule shall with immediate effect cease to exercise all rights in the management or administration of the affairs of the registered society.

(3) Any suspension under the provisions of sub-rule (1) of this Rule shall be subject to confirmation or to being set aside by a majority at the first general meeting of the registered society held after the suspension.

(4) Before confirming or setting aside the suspension, the General meeting shall hear the member who was suspended by the Board if he so chooses.

It was contended that the suspension of the Plaintiff is only transitional until the next General Meeting and subject to confirmation at the next General Meeting.

It was further contended that since Rule 11B (4) provides that

"Before confirming or setting aside the suspension, the General Meeting shall hear the member who was suspended by the Board if it so chooses."

the Rule does not require the giving of prior notice of hearing to the member concerned before a suspension could be imposed. The only requirement for hearing was at the next General Meeting and not at or before the Committee Meeting.

It was further contended that the Plaintiff had not exhausted his remedies laid down by the Co-operative Societies Act and the Rules thereunder before issuing his writ. It was argued that the dispute between the parties herein was a dispute between a member of the committee and the committee members, and therefore a dispute within the meaning of Part IX of the Co-operative Societies Act, 1948. Accordingly, section 49 of the Act provided that such disputes shall be referred to the Registrar-General for a decision and section 49(4) of the Act provided that a decision of the Registrar-General shall be final and shall not be called in question in any Civil Court.

It was further contended that when the Registrar-General had by his letter dated January 10, 1984 made his decision that the dispute should be settled at the next General Meeting the Plaintiff was accordingly barred from bringing the present suit.

Mr. Ho, for the Defendants, drew attention to the issues in the case which, he said, were fourfold, namely:

(1) whether an interim injunction should have been granted;

(2) alternatively, whether it should be set aside;

(3) whether the Plaintiff's suspension was void because of a breach of the rules of natural justice;

(4) whether the Plaintiff was debarred from bringing the suit by reason of the matters alleged in paragraph 9 of the Statement of Defence, namely, "that the Plaintiff's claim herein is a dispute provided for under Part IX of the Co-operative Society Act, 1949. The Co-operative Society Act, 1949 provides that such dispute should be referred to the Registrar-General of the Co-opertive Society for a decision and such decision shall be final and shall not be called in question in any civil court."

He then reviewed the facts and pointed out that the Plaintiff was suspended under the provisions of Rule 11(B)(1) of the Co-operative Societies Rules, 1949.

He said that whilst it was true that no charge was levelled against the Plaintiff at the committee stage when he was called upon to explain why he signed the letter concerned and gave the subsequent Press release this was not legally necessary. He cited a passage from paragraph 953 of *Halsbury's* Laws of England, Vol. 24, 4th ed. page 536, which contained the general principles which should guide the Court in the grant or refusal of interlocutory injunctions. He stressed that the Plaintiff's contention that there had been an infringement of the right had to be clear and free from objection. He next referred to the balance of convenience and the burden of proof with regard thereto citing *Texaco*[1] on the need for the maintenance of the *status quo*.

He urged that had an injunction been refused the Plaintiff would have suffered nothing. There was no proprietary or personal right of his involved adding, at the same time, that there were after all 21 members in the committee. Any absence of the Plaintiff therefrom would not have mattered. On the other hand, were an injunction granted, as happened, its effect would be to defeat Rule 11 B (1) of the Co-operative Societies Rules.

He then referred to Rule 11 B (3) which provides that any suspension of a member of the Committee was subject to confirmation or to being set aside by a majority at a first General Meeting. So, the effect of the injunction was also to defeat Rule 11 B(3).

He next referred to the Plaintiff's right to a hearing before the General Meeting as provided under Rule 11 B (4).

He then observed that the Plaintiff was blowing hot and cold since on the one hand he complains that he has been denied a right to be heard but on the other by instituting this suit he has deprived himself of his right to be heard under Rule 11B(4).

He also argued that the effect of the injunction was to reinstate the Plaintiff in the Committee and therefore though negative in form it was mandatory in reality. Such injunctions he pointed out were rarely granted and cited *Leary's case*[2]. He drew attention to the fact that the Order made in this case was not one for expulsion but for mere suspension.

He next referred to the element of delay. According to Mr. Ho, a period of some 50 days had elapsed between the making of the suspension order and the institution of the suit. He then observed that this showed there was no urgency in the order and no difficulty in serving the application for an injunction on the Defendants. Yet the Plaintiff proceeded *ex parte*. He cited *Bates* [3] which showed that justification for proceeding *ex parte* only arises in cases of real urgency and where there is a true impossibility of giving notice.

On the question whether there was a right to be heard, Mr. Ho's contention was that although there was explicit provision for this at the General Meeting stage under Rule 11 B (4) there was nothing of the sort at the Committee stage under Rule 11 B (1). The inference therefore according to him was that there was no right to be heard at the Committee stage. In support he referred to the well-known maxim *expressio unius est exclusio alterius*. He cited *Pearlberg* [4]; *Bird* [5] and *Hutton* v. *Attorney-General* [6].

He urged that suspension decisions are administrative and do not carry with them a right to be heard: (see, *e.g.*, *Breen*[7]; *Furnell*[8] and *Lewis*[9]).

He further argued that the Defendant being a co-operative society are a body corporate by virtue of section 8 of the Co-operative Societies Act, 1948. So, applying the principles enunciated in *Gaiman*[10] rules of natural justice were excluded.

He next argued that this Court has no jurisdiction to entertain the Plaintiff's suit. Section 49 (2) (c) of the Co-operative Societies Act, 1948, conferred jurisdiction upon the Registrar-General to refer disputes to the Court and as he had not done so the Court was not competent to entertain the suit.

He also cited section 49 (4) of the Co-operative Socities Act, 1948, which provided that decisions of the Registrar shall be final and shall not be questioned in a Court of Law. The Registrar's decision in this case was that the Plaintiff should refer the matter to a General Meeting. The Plaintiff could have but did not attack this decision by way of certiorari so the Registrar's decision was binding. He cited *Subramaniam*[11].

Mr. Ho's concluding submission was that the Plaintiff had not exhausted his remedy (Rule 11 B) and, therefore, this Court should not entertain his suit and that consequently the injunction should be set aside and the suit struck off. He cited *Periasamy*[12]; *Tharmalingam*[13] and *Kolandaisamy*[14].

For the Plaintiff, Mr. Manecksha opened by pointing out that there was here a dispute between the Plaintiff and the Defendants' committee within the meaning of section 49 of the Co-operative Societies Act, 1948, and By-law 95. He then compared this provision with Rule 11 B Co-operative Societies Rules, 1949, which vests powers in the Committee and in General Meeting.

The dispute here was whether or not in signing the letter addressed to the Registrar of Societies and in giving a Press release the Plaintiff had acted in a manner prejudicial to the interests of the Society.

This dispute the Plaintiff did refer to the Registrar (see En. 2 Ex. Y6) but the latter did not make a decision though he did say that the dispute should be referred to the General Meeting (En. 2 Ex. Y7). In the event, the matter was referred to the Registrar-General of Co-operative Societies (En. 2 Ex. Y8) who replied by letter dated January 10, 1984 (En. 2 Y10) that he was

"of the opinion that the Co-operative Board had acted in accordance with the law. As such, in accordance with the requirement in Rule 11 B (1), the suspension of Mr. Yeoh is required to be brought to the General Meeting. If the decision of the General Meeting to be convened is challenged by Mr. Yeoh, he can refer the dispute to the Registrar-General. At this stage any interference from the Registrar-General is not only unjustifiable, but also against the spirit of the Rules concerned."

Mr. Manecksha contended that this conclusion of the Registrar-General was wrong and that it was not a decision within the meaning of section 49 since he did not decide the dispute himself or refer it to arbitration or to Court. The Registrar-General had in effect abdicated his responsibilities.

In answer to the Court, Mr. Manecksha accepted that the Plaintiff could have applied for an order in the nature of a *mandamus* under section 44(1) of the Special Relief Act but since the Registrar-General appears to have pre-judged the issue judging from his letters the Plaintiff had no option but to seek declaratory relief in a Court of Law.

On the question whether the rules of natural justice applied at the Committee stage although Rule 11 B (1) was silent, he argued that the effect of the suspension order was to impeach the Plaintiff's character. The matter had received considerable publicity in the local newspapers. He argued that in a situation such as this clear words must be used to oust the principles of natural justice, and, in this context, there was in fact no distinction between expulsion and suspension orders. He cited *John* v. *Rees*[15] and *Lawlor* v. *Union of Post Office Workers*[16].

He pointed out that there was no provision in the by-laws governing the Defendant Society for ouster of the Court's jurisdiction before the matter in controversy reaches the General Meeting. He cited *Lawlor's case (supra)* at pages 733 F-734 C. He drew attention to the fact that the mere request for an explanation at the Committee stage was not a hearing. There was not only no charge levelled against the Plaintiff but not even any sufficient notice. He cited *Rex* v. *Thames Magistrate's Court ex parte Polemis*[17].

On the subject of delay, Mr. Manecksha pointed out that there was in fact none. The time table of events was this:

The Plaintiff got his letter calling for an explanation on December 5, 1983. Four days later, Plaintiff's solicitors wrote to the Committee saying that the suspension was wrong and asking that the Plaintiff be reinstated. By a letter dated December

19, 1983 the Defendant's solicitors replied that the action taken by the Committee was quite proper. This letter the Plaintiff received on December 22, 1983. The next day, the Plaintiff's solicitors wrote to the Registrar of Societies in Penang. One week later, the Registrar replied by his letter dated December 30, 1983. Four days later, the Plaintiff's solicitors wrote to the Registrar-General and, on January 16, 1984, Plaintiff's solicitors received the Registrar-General's reply. The suit was filed five days later. In the circumstances, it was said there was no dilatoriness on the part of Plaintiff who was endeavouring all the time to conform to the law laid down in the Co-operative Societies Act, 1948.

He urged that the Plaintiff's claim was in no way frivolous or vexatious or an abuse of the process of the Court nor could it be said that it failed to disclose a reasonable cause of action.

On the balance of convenience, he submitted that if the injunction were dissolved, the Plaintiff would suffer socially, especially in his relationship with other teachers, parents of pupils and pupils. The Plaintiff also owed a responsibility to other members who elected him. A loss such as this could not be compensated in terms of money should the injunction be dissolved and should he succeed in his suit.

By contrast, what would the Defendant suffer were the injunction allowed to remain? The Plaintiff was merely one of 17 members on the Committee. If the Court considered that *prima facie* the rules of natural justice had been breached, then the injunction should remain. This is what happened in *John* v. *Rees* and *Lawlor* v. *Union of Post Office Workers* cited above.

It is apparent from the arguments put forward by counsel for the Plaintiff and Defendant which took the better part of the day and, from the many authorities cited, that the issues which arose for decision were not free from difficulty. Indeed, they were complex. This, to my mind, emphasized the point that they were eminently triable. Certainly, there was no question of this being a clear and obvious case for the exercise of the jurisdiction to strike out: see *Attorney-General of Malaya* v. *Chiow Thiam Guan.*[18]

As to the question whether the rules of natural justice applied and, specifically, whether there was a right to be heard, the following authorities merit reading:

In *Stevenson* v. *United Road Transport Union* [19] Buckley, J. said at page 949, paragraph a:

> "Where one party has a discretionary power to terminate the tenure or enjoyment by another of an employment or an office or a post or a privilege, is that power conditional on the party invested with the power being first satisfied on a particular point which involves investigating some matter on which the other party ought in fairness to be heard or to be allowed to give his explanation or put his case? If the answer to the question is Yes, then unless, before the power purports to have been exercised, the condition has been satisfied after the other party has been given a fair opportunity of being heard or of giving his explanation or putting his case, the power will not have been exercised."

And, further down at paragraph h and onwards, His Lordship said:

> "Counsel for the union has placed some reliance on the fact that the rules do not in terms require the executive committee to hear an official whom they propose to dismiss, or to give him notice of any complaint against him, and that the rules give no right of appeal specifically to a dismissed official. In this connection it is important to bear in mind that the executive committee were purporting to dismiss the plaintiff on the ground of findings in what was expressly described as a disciplinary case. It seems to us impossible to contend that proceedings of that kind could be properly conducted without compliance with the requirements of natural justice, which involve that the plaintiff should have notice of the charges against him and should be heard."

In *Gaiman & Ors.* v. *National Association for Mental Health,* Megarry, J. (as he then was) said:

> "Thirdly, the wording of art 7 (b) seems to me to militate against the implied term. True, it lacks any phrase like 'in their absolute discretion', such as appeared in *Russel* v. *Duke of Norfolk*: but it is a wholly unrestricted power, not confined to cases of misconduct, and so on. In other words, if the power had been confined to cases of misconduct or the like, that would have been some indication that the principles of natural justice ought to apply; for since there could be expulsion only if misconduct were established, not only would the machinery of natural justice in making and adjudicating on the charge be readily applicable, but also reputation might well be at stake. It is otherwise where, as here, the power given is absolute in its terms.
>
> Fourthly, the cases in which the principles of natural justice have been held to be applicable have in the main been cases in which what was at stake was liberty, property or a means of livelihood (as in the trade union cases). That does not exhaust the field. Thus in *Cohen* v. *National Union of Tailors and Garment Workers*, what was in issue was not membership of a trade union but the right to hold office in a trade union; and on motion Plowman J held that the principles of natural justice applied. But I think that one of the elements which points to the applicability of the principles of natural justice is the importance and gravity of what is at stake. The mere membership of the association, involving no real

interest in property, and no question of livelihood or reputation, does not seem to me to be *prima facie* a matter in respect of which there is any strong claim to have the principles of natural justice applied, at any rate on motion."

In *Lewis* v. *Heffer*, Geoffrey Lane, L.J. said this:

"So far as the rules of natural justice are concerned, it is suggested that before the NEC suspended the committee and officers they should have been heard, and the fact that they were not heard was a breach of the rules of natural justice sufficient to invalidate the suspension. It seems to me that this suspension was an administrative action which by its very nature had to be taken immediately. It was impossible for the NEC at this stage, and I emphasise those words 'at this stage', to hear both sides. In most types of investigation there is in the early stages a point at which action of some sort must be taken and must be taken firmly in order to set the wheels of investigation in motion. Natural justice will seldom if ever at *that* stage demand that the investigator should act judicially in the sense of having to hear both sides. No one's livelihood or reputation at that stage is in danger. But the further the proceedings go and the nearer they get to the imposition of a penal sanction or to damaging someone's reputation or to inflicting financial loss on someone, the more necessary it becomes to act judicially, and the greater the importance of observing the maxim, *audi alteram partem.*"

As regards the maxim "*expressio unius est exclusio alterius*", upon which Mr. Ho laid much stress, it has been aptly described by Lopes, L.J. in *Colquhoun* v. *Brooks*[20] as follows:

"It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The *exclusio* is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice."

As to the question of the jurisdiction of the Court to grant declaratory relief, reference may be made to the following observations of Viscount Radcliffe in *Ikebife Ibeneweka & Ors.* v. *Peter Egbuna & Anor.*[21]:

"Did the judge violate any legal principle in thus disposing of the suit? Generally speaking, the rules of law and practice that he had to follow were those "for the time being observed in England in the High Court of Justice" (High Court Law, 1956, sections 14 and 15). These rules include the power under Order 22, r. 5, of the Rules of the Supreme Court which enables the court to make 'binding declarations of right, whether any consequential relief is or could be claimed or not.' Much has been said in various reported judgments about the nature of the power thus vested in the court, but none of these observations detracts from the two primary considerations, that the power to make declarations is conferred, surely not by accident, in wide and general terms, and that what is conferred is a discretion to be exercised according to the facts of each individual case."

On the next page, in *Hansen* v. *Radcliffe U.D.C.*[22], Lord Sterndale, M.R. said:

"... under Order 25, r. 5, the power of the court to make a declaration, where it is a question of defining the rights of two parties, is almost unlimited; I might say only limited by its own discretion. The discretion should, of course, be exercised judicially, but it seems to me that the discretion is very wide."

In the end, I have to administer to myself and answer the following interrogatories suggested in the oft-quoted case *American Cyanamid* v. *Ethicon*[23]:

(1) Has the Plaintiff demonstrated that there is a serious question to be tried?
Answer: Yes.

(2) Has the Plaintiff demonstrated he has a real prospect of success in his claim for a permanent injunction at the trial and for other reliefs prayed for?
Answer: Yes.

(3) If the Plaintiff succeeded, would he be adequately compensated by damages for the loss which he has alleged he has suffered by reason of his suspension?
Answer: No.

(4) If the Defendants were to succeed at the trial in establishing its defence, would it be adequately compensated by an award of damages under the undertaking given by the Plaintiff?
Answer: Yes.

(5) Where does the balance of convenience lie?
Answer: It lies in favour of preserving the *status quo* pending the trial of the action.

In the circumstances, I exercised my discretion in dismissing the motion to discharge the injunction with costs to the Plaintiff.

Application dismissed.

Solicitors: *Gan Teik Chee & Ho; Lim Kean Siew & Co.*